

Draft #5(Clean) – 10032007.

Prepared by: Georgia H. Herbert, P.C.

TAX MAP NOS.OR PINS: 7917-07-6303, 7907-89-5203

Exempted from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (the "Easement"), made this ____ day of _____, 2007, between CLOVERLAND FARM, L.L.C., a Virginia limited liability company which, with its successors in title to all or any portion of the Property, are herein called "Grantor", and the BOARD OF SUPERVISORS OF FAUQUIER COUNTY, of the Commonwealth of Virginia, which with its successors in title to the Property is herein called "Grantee", whose address is 10 Hotel Street, Warrenton, Virginia 20186;

RECITALS

Whereas, Grantor is the owner in fee simple of real property fronting on State Route 600, (Beverleys Mill Road) in the Scott Magisterial District of Fauquier County, Virginia containing 146.9006 acres, more or less, and more particularly described herein and hereinafter referred to as "the Property," and desires to convey to Grantee, for the public purpose identified herein, an open-space easement over the Property as herein set forth; and

Whereas, Grantee is the governing body of a political subdivision of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code and Treasury Regulation §1.170A-14(c)(1), is a public body under Section 10.1-700, of the Code of Virginia, 1950, as amended, and is willing to accept an open-space easement over the Property as herein set forth; and

Whereas, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, of the Code of Virginia, as amended (the "Open-Space Land Act"), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

Whereas, the Open-Space Land Act declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Grantee to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth; and

Whereas, the Comprehensive Plan of Fauquier County, Virginia (1992-2010), as adopted by its Board of Supervisors, includes the following goals: “To recognize the county’s traditionally agricultural and rural character and the need for preservation of its open-spaces and scenic beauty”; “To protect critical environmental resources and to maintain renewable natural resources so that they are not degraded but remain viable for future generations”; and “To protect and promote the agricultural industry;” and

Whereas, preservation of the Property will promote the public policies of Fauquier County and further a public purpose of the Grantee by protecting open-space, productive agricultural lands, scenic views, and natural resources; and

WHEREAS, Fauquier County has recognized the importance of the continued preservation of the Property as open-space and forestal land by providing Use Value Assessment of the Property for real property tax purposes;

WHEREAS, the Property lies in the viewshed of the Commonwealth of Virginia’s Bull Run Mountains Natural Area, a natural area within forty-five (45) miles of the Nation’s capital which contains significant natural and historic resources;

WHEREAS, the Property lies within the Bull Run Mountain area identified in the Virginia Critical Environmental Areas Study (1972) conducted by the Virginia Division of State Planning and Community Affairs as a critical environmental area meeting four (4) of the five (5) surveyed criteria, being an area of unusual natural features worthy of protection by State or local governments, an area crucial to an ecological system, an area presently endangered and an area appropriate for public use;

Whereas, the Property is adjacent and/or proximate to other properties under open-space easement to the Grantee and to the Virginia Outdoors Foundation, an agency of the Commonwealth of Virginia and contributes to the open-space values of such lands;

Whereas, the Property lies adjacent to The Plains Agricultural and Forestal District established by the Fauquier County Board of Supervisors pursuant to the Virginia Agricultural and Forestal District Act (§15.2-4300, *et. seq.*, of the Code of Virginia);

Whereas, the Property is located within the Broad Run and Occoquan watersheds, areas identified for special environmental protection in the Fauquier County Comprehensive Plan and in the Virginia Critical Environmental Areas Study (1972) prepared by the Virginia Division of State Planning and Community Development for the General Assembly of the Commonwealth of Virginia. Broad Run, which flows through the Property, is a tributary to the Occoquan, an important drinking water supply source for Northern Virginia and the subject

of the State Water Control Board's Occoquan Policy enacted to protect water quantity within that watershed;

Whereas, the Property includes approximately Two Thousand One Hundred Fifty (2150) linear feet of the Broad Run stream bed and two (2) wet weather tributaries to Broad Run;

Whereas, the Property lies one and three quarters (1 $\frac{3}{4}$) miles upstream of Broad Run's entrance to Lake Manassas, the drinking water source for the cities of Manassas and Manassas Park;

Whereas, the specific conservation values of the Property are documented in a report to be kept on file at the offices of the Grantee and incorporated herein by this reference, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Property as of the effective date of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant;

Whereas, the Grantor believes that open-space conservation easements serve to protect scenic, natural, agricultural, and open-space values of properties in a manner that permits continued private ownership of land while fulfilling public conservation purposes;

Whereas, the Grantor and the Grantee desire to protect in perpetuity the open-space values identified in the previous paragraphs, including, but not limited to, conserving and protecting agricultural and forestal lands as natural resources, protecting rural agricultural lands by prohibiting further subdivisions, protecting water quality (particularly the streams which flow through the Property), protecting scenic views (particularly the views enjoyed by the public traveling along State Route 600), and protecting open-space lands currently subject to open-space easements to the Grantee and/or to the Virginia Outdoors Foundation, an agency of the Commonwealth of Virginia, the "Open-Space Values," and intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

Whereas, the conservation purpose of this Easement is to preserve and protect in perpetuity the Open-Space Values of the Property; and

Whereas, the Grantee has determined that the restrictions hereinafter set forth in this Easement (the "Restrictions") will preserve and protect in perpetuity the Open-Space Values of the Property, which advance the public purposes established in its Comprehensive Plan, which values are reflected in the preceding paragraphs, the Grantee's evaluation of the Property, and the documentation of the condition of the Property as contained in the Grantee's files and records; and

Whereas, the Grantee has determined that the Restrictions will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open-Space Values of the Property, the scenic values enjoyed by the general public, or the governmental conservation policies furthered by this Easement; and

Whereas, the Grantee, by acceptance of this Easement by its Board of Supervisors at its meeting of October 11, 2007, designates the Property to be retained and used for the preservation the Open-Space Values and provision of Open-Space Land pursuant to the Open-Space Land Act; and

Whereas, the Grantor intends to convey to the Grantee by this Easement the right to preserve and protect the Open-Space Values of the Property in perpetuity and to further the public purposes established in the Fauquier County Comprehensive Plan, and to qualify the grant of such restrictions and associated rights as a qualified conservation contribution under Section 170(h)(2)(c) of the Internal Revenue Code of 1986.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by Grantee, Grantor does hereby give, grant and convey to Grantee an open-space easement in gross over, (the "Easement") and the right in perpetuity to restrict the use of, the Property, which is described in EXHIBIT "A" attached hereto and made a part hereof, and which consists of 146.9006 acres, more or less, located in Scott Magisterial District, Fauquier County, Virginia hereinafter referred to as the "Property."

ALL THAT certain tract or parcel of land, situate and being in Fauquier County, located on the westerly side of Beverleys Mill Road, Route 600, and being more particularly described as 165.1095 acres, more or less, on plat entitled "Boundary Line Adjustment of the lands of Cloverland Farm, LLC, dated October 16, 2006, by W. Stuart Dunn, and recorded in Deed Book 1244 at page 253 among the Fauquier County, Virginia, land records (the "BLA Plat"), LESS AND EXCEPT that approximately 18.2089 acre portion of the parcel which is shown on the BLA Plat as lying within the jurisdiction of Prince William County, Virginia.

AND BEING a portion of the property conveyed to Cloverland Farm, L.L.C. by Deed from Mark F. Miller dated December 11, 2003 and recorded in Deed Book 1074 at page 1648 among the Fauquier County, Virginia land records and as Instrument No. 200312120227760 among the Prince William County Virginia, land records.

The Property is identified as portion of PIN 7917-07-6030 among the tax records of Fauquier County, Virginia

The Grantor declares that the Property shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions and easements set forth below (the "Restrictions"), which Restrictions shall be deemed to run with the land and to burden the Property in perpetuity; and the Grantor covenants that no acts or uses which are inconsistent with the Easement or which may be harmful to the Open-Space Values shall be conducted on the Property.

ARTICLE I – EASEMENT

1. **PURPOSE.** The purpose of this Easement is to preserve and protect the conservation value of the Property in perpetuity by enforcing the Restrictions imposed on the use of the Property by Article II, while allowing the Property to be used for all other uses by the owner, including but not limited to agriculture, livestock production and forestry, so long as such uses do not interfere with the conservation value of the Property. The conservation value of the Property is its value as open-space land as more specifically identified as the Open-Space Values described in the recitals to this Easement which are hereby incorporated.
2. **DURATION.** This Easement shall be perpetual. It is an easement in gross which runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the Grantor and the Grantee, and their respective successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.
3. **NO PUBLIC ACCESS.** Although this Easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.

ARTICLE II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property to protect the Open-Space Values of the Property pursuant to the public policies set forth above. The acts that the Grantor covenants to do and not to do upon the Property, and the Restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

1. **DIVISION.** Division of the Property is prohibited. The Property shall not be sold or conveyed except as a whole parcel or tract of land. Conveyance of partial interests in the title to the Property is not prohibited by this Easement. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:
 - (i) The entire adjacent parcel is subject to a recorded open-space easement conveyed to Grantee or to another public body as defined in Section 10.1-1700 of the Code of Virginia; and
 - (ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Grantee or the governing body of any successor in interest to the Grantee.

2. BUILDINGS AND STRUCTURES.

A. Permitted Buildings and Structures. No permanent or temporary buildings or structures may be built, maintained or replaced on the Property other than:

- (i) One single family dwelling and non-residential outbuildings or structures commonly and appropriately incidental thereto, such as garage, sheds, poolhouse, office, and guest house, all of which shall be sized appropriately for single family use;
- (ii) Farm buildings or structures, except that no farm building or farm structure exceeding four thousand five hundred (4,500) square feet in ground area may be constructed on the Property without the prior written approval of Grantee. In determining whether to grant such approval, Grantee's consideration shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the Open-Space Values of the Property. For the purposes of this subparagraph, "farm building or structure" shall mean a building or structure originally constructed and used for the activities specified in paragraph 3(i).
- (iii) Private roads and utilities that serve buildings or structures permitted under this Paragraph 2, and unpaved farm or forest roads which serve the Property. All utilities which are installed on the Property after the date of this Easement shall be constructed underground if they would otherwise be visible from State Route 600.

B. Building Location Restrictions. No building or structure of any nature may be constructed or maintained on the Property (a) within six hundred (600) feet of the center line of State Route 600 or (b) within two hundred (200) feet (measured from the top of the bank) of any perennial spring or stream on the Property. This prohibition shall not apply to the construction or maintenance of (i) customary fencing, (ii) livestock feeding and watering troughs, (iii) sheds not served by electricity or water, (iv) mailboxes, (v) gates and gateposts, (vi) permitted signs, (vii) private wells serving the Property, (viii) underground sewage disposal systems serving the Property and (ix) underground utilities serving the Property within these prohibited areas.

C. No Secondary Dwelling. It is the intention of the Grantor that no secondary dwelling shall be built or maintained on the Property, and no guest house which may be constructed as described in subparagraph A above shall be permanently occupied.

3. INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities other than the following are prohibited:

- (i) Agriculture including animal husbandry, aquaculture, silviculture and equine activities, provided, however, that large-scale industrial or commercial operations such as wineries, race tracks or livestock feedlots are permitted only with the prior written approval of Grantee;

(ii) Temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation value herein protected; and

(iii) Activities that can be, and in fact are, conducted within permitted buildings without material alteration to the external appearance. Temporary outdoor activities involving one hundred (100) or more people shall not exceed seven (7) consecutive days in any ninety (90) day period unless approved by Grantee in advance in writing. Notwithstanding any other provision of this Easement, no commercial recreational use, except for de minimis commercial recreational uses, shall be allowed on the Property.

4. MANAGEMENT OF FOREST

A. Woodlands presently comprise approximately eighty-five percent (85%) of the Property. It is the intention of the Grantor that the majority of the present woodlands be maintained undisturbed by human interference and remain as a minimum of sixty percent (60%) of the Property. Except for clearing necessary to the creation of clearings for agricultural and/or horticultural uses as described in Paragraph 4.B. below, any alterations in the forested lands shall be designed to be beneficial or harmless to native wild plants, native wildlife, natural diversity and the long term health of the ecosystem.

B. Notwithstanding the foregoing provisions of Paragraph 4.A, the following activities shall be allowed on the Property: (1) removal of trees as necessary to create and maintain access roads to permitted buildings and for permeable-surfaced pedestrian and equestrian trails which do not exceed ten (10) feet in width; (2) tree removal necessary to the construction and maintenance of any permitted buildings, including creation of reasonable clearings for landscaping around such buildings, so long as the cumulative total of such clearings does not exceed forty-five thousand (45,000) square feet and the cumulative total of cleared land does not comprise more than forty percent (40%) of the Property; (3) treatment or removal of diseased, non-native or invasive trees or plants which threaten public safety, permitted buildings or the health and/or character of the forestall, agricultural or other natural resources on the Property or of adjacent properties; (4) removal of dead or fallen trees to be used (but not sold) by residents of the Property; and (5) creation of clearings for agricultural or horticultural uses so long as the total area cleared for these uses when combined with the clearings described in 4.B.(2) above does not exceed forty percent (40%) of the land area of the Property.

5. GRADING, BLASTING, MINING. Grading, blasting or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create private ponds, (ii) stream bank restoration and erosion control pursuant to a

government permit, (iii) erosion and sediment control pursuant to a government-required erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, private roads, and utilities as permitted in Paragraph 2. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Grantor shall give thirty (30) days' prior written notice to Grantee before commencing and grading, blasting or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iv) above. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining or drilling for oil or gas on the Property is prohibited.

6. ACCUMULATION OF TRASH. Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property.

7. SIGNS. Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to:

- (i) State the name and/or address of the owners of the Property;
- (ii) Advertise the sale or lease of the Property;
- (iii) Advertise the sale of goods or services produced incidentally to a permitted use of the Property;
- (iv) Provide notice necessary for the protection of the Property;
- (v) Give directions to visitors; or
- (vi) Recognize historic status or participation in a conservation program.

Temporary signs for other purposes may be maintained on the Property for no longer than eight (8) consecutive weeks and for no more than sixteen (16) weeks in any calendar year. No permitted sign shall exceed nine (9) square feet in size.

- 8. RIPARIAN BUFFER.** To protect water quality in Broad Run and in the two tributaries to Broad Run which flow through the Property (together the "Protected Streams"), Grantor covenants and agrees that the areas shown on the BLA Plat as lying within the limits of "HUD Flood Zone A" and areas lying within thirty-five (35) feet (measured from the top of the stream bank) along each edge of any tributary to Broad Run which flows through the Property but is not shown on the BLA Plat shall be "Protected Riparian Buffers" and shall be protected from degradation as described in this Paragraph 8. Within these Protected Riparian Buffers there shall be (a) no buildings or other substantial structures constructed, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, (c) no removal of trees except removal of invasive species or removal of dead, diseased or dying trees or trees posing an imminent human health or safety hazard, and (d) no cultivation or other earth-disturbing activity, except as may be reasonably necessary for (i) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (ii) fencing along or within a Protected Riparian Buffer; (iii) construction and maintenance of stream crossings that do not obstruct water flow, and (iv) creation and maintenance of foot or

horse trails with unimproved surfaces. Limited mowing to control non-native species or protect trees and other plants planted in forested buffers shall be permitted within the Protected Riparian Buffers.

ARTICLE III – ENFORCEMENT

- 1. RIGHT OF INSPECTION.** Grantor covenants and agrees that representatives or agents of Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this Easement after permission from, or reasonable notice to, the Grantor or the Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these Restrictions with notice to the Grantor or Grantor's representative being given at the earliest practicable time.
- 2. ENFORCEMENT.** The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and Restrictions herein contained. Grantor hereby grants and conveys to Grantee the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance, and to enjoin non-compliance by ex parte temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by the court.
- 3. NATURAL CAUSES.** Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or any prudent action taken by Grantor to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.
- 4. NO PUBLIC RIGHTS.** The parties agree that the Easement does not create, and shall not be construed to create, any rights of the general public to maintain any action for enforcement against Grantor, or their successors or assigns, for any violation of the terms of this deed.
- 5. FAILURE TO ENFORCE.** The failure of Grantee to enforce any term of this Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.

**ARTICLE IV – EXTINGUISHMENT, CONVERSION/ DIVERSION and
AMENDMENT**

1. GRANTEE’S PROPERTY RIGHT. Grantor covenants and agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time.

2. EXTINGUISHMENT, CONVERSION, DIVERSION. Grantor and Grantee covenant and agree that this Easement is perpetual and shall not be extinguished, and acknowledge that extinguishment of the Easement is not permitted by the Open-Space Land Act. Nevertheless, should any attempt be made to extinguish the Easement, any such extinguishment can be made only by judicial proceedings and only if such extinguishment also complies with Virginia Code Section 10.1-1704 as written on the date of this Easement. In addition, no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 as written on the date of this Easement and the provisions of Section 170 of the Internal Revenue Code and the applicable Treasury Regulations. In any sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation Restriction computed as set forth in Article IV, Section 1 above, but not to be less than the proportionate value that the perpetual conservation Restriction at the time of the extinguishment bears to the then value of the Property as a whole. Grantee covenants and agrees to use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this Easement and the Open-Space Land Act.

3. AMENDMENT. Grantor and Grantee, or Grantee and the then owner of the Property may amend or modify the Easement to strengthen its terms, increase protection of the Property’s conservation values and natural resources or add to the restricted property, provided that no amendment shall be allowed which affects the Easement’s perpetual duration or reduces the conservation or Open-Space Values of the Property. No amendment or modification shall be effective unless documented in a notarized writing executed by Grantee and the then owner of the Property and recorded among the land records of the Fauquier County, Virginia.

ARTICLE V – DOCUMENTATION

DOCUMENTATION. Documentation retained in the office of Grantee including, but not limited to, the baseline documentation report (“Documentation Report”), describes the condition and character of the Property at the time of the gift. The documentation Report may be used to determine compliance with and enforcement of the terms of the Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to the donation, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby

acknowledge that the Documentation Report contained in the files of Grantee is an accurate representation of the Property.

ARTICLE VI – GENERAL PROVISIONS

1. TITLE. Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances, including but not limited to, any mortgages not subordinated to this Easement.

2. ACCEPTANCE. Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 and is evidenced by the signature of Paul McCulla, County Administrator, by authority granted by Grantee's Board, October 11, 2007.

3. ASSIGNMENT BY GRANTEE. Grantee may transfer or convey this Easement to a public body, as the same is defined by the Open-Space Land Act, but only if Grantee conditions such transfer or conveyance on the requirements that;

(i) All restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity; and

(ii) The transferee agrees not to convert or divert the Property from open-space land uses except as permissible under Section 170 of the Internal Revenue Code, as amended, and under Section 10.1-1704 of the Open-Space Land Act as written on the date of this Easement; and

(iii) The transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the Internal Revenue Code, as amended, and the applicable Treasury Regulations; and

(iv) The transferee records among the land records where the Easement is recorded an assignment of the Easement and provides written notice of such assignment to the Grantor or the then current owner of the Property.

4. NOTICES TO GRANTEE. Grantor shall notify Grantee in writing (i) before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or Open-Space Values associated with the Property; (ii) at least thirty (30) before beginning construction or enlargement of any dwelling on the Property; and (iii) within sixty (60) days of closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property. Any notices, requests for approval or other communications to Grantee or any notices, responses to requests for approval or other communications to Grantor under any section of this Easement shall be in writing and sent to the following addresses or to such addresses as may hereafter be specified in writing:

Grantee:

Grantor:

Board of Supervisors of Fauquier County
10 Hotel Street
Warrenton, VA 20186

Cloverland Farm, L.L.C.
P.O. Box 301
Broad Run, VA 20137

The failure of any party to perform any act required by this Article VI, Section 4 shall not impair the validity of this Easement or limit its enforceability in any way.

5. INCLUSION OF TERMS IN SUBSEQUENT DEEDS. This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property, but any party's failure to do so shall not impair the validity of this Easement or limit its enforceability in any way.

6. CONSTRUCTION. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the Restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

7. INTERACTION WITH OTHER LAWS. This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

8. ZONING ORDINANCE. Notwithstanding any other provision of this Easement, Grantee's Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

9. MERGER. Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

10. TAX MATTERS. The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see Section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantor has not provided any goods or services to Grantor in consideration of the grant of the Easement.

11. WARRANTIES. THE COUNTY OF FAUQUIER MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING WHETHER ANY TAX BENEFITS WILL BE AVAILABLE TO GRANTOR FROM THE DONATION OR ANY PARTIAL DONATION OF THIS EASEMENT, NOR WHETHER ANY SUCH TAX BENEFITS MIGHT BE TRANSFERABLE, NOR WHETHER THERE WILL BE ANY MARKET FOR ANY TAX BENEFITS WHICH MIGHT BE TRANSFERABLE, NOR WHETHER THIS DEED OR ANY OTHER FORM OR DOCUMENTATION PREPARED BY THE COUNTY WILL SATISFY ANY STATE OR FEDERAL REQUIREMENT, LAW OR REGULATION RELATED TO TAX CREDITS OR DEDUCTIONS FOR THE DONATION OR PARTIAL DONATION OF THIS EASEMENT.

12. RIGHT TO DESIGNATE EASEMENT CO-HOLDER. Grantee shall have the right, in its sole discretion, now and at any time in the future, to transfer part or all interest it has under this Easement to a public body as the same is defined in Section 10.1-1700 of the Open-Space Land Act. Such transfer shall not require the consent of the Grantor or any trustee under a deed of trust which has been subordinated to this Easement or is recorded subsequent to the date of this grant, but shall be subject to the conditions and requirements of Article VI, Section 3 of this Easement (Assignment by Grantee).

13. SEVERABILITY. If any provision of this deed or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

14. ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.

15. CONTROLLING LAW. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

16. RECORDING. This Easement shall be recorded in the land records office of the Circuit Court of Fauquier County, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

WITNESS the following signatures and seals:

Cloverland Farm, L.L.C., a Virginia limited liability company, Grantor

By: _____(SEAL)
John Coles, Manager

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAUQUIER, TO WIT:

I, _____, a Notary Public for the Commonwealth aforesaid, hereby certify that John Coles, acting in his capacity as Manager appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this ____ day of _____, 2007.

Notary Public

My commission expires: _____ (SEAL)

Accepted:
BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA
A body corporate and politic

By: _____
Paul McCulla
Its County Administrator

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAUQUIER, TO WIT:

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that Paul McCulla, Fauquier County Administrator, personally
appeared before me this day and acknowledged the foregoing instrument on behalf of the Board
of Supervisors of Fauquier County, Virginia.

WITNESS my hand and official seal this _____ day of _____, 2007.

Notary Public

My commission expires: _____ (SEAL)